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SUPREME COURT, U. S.

No. 5277.

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United States Court of Appeals
For the First Circuit

HANDY CAFE, INC.,

PLAINTIFF, APPELLANT,

v.

JUSTICES OF THE SUPERIOR COURT Et Al.,

DEFENDANTS, APPELLEES.

RECORD APPENDIX

TO

BRIEF FOR THE APPELLANT

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

I, JOHN A. CANAVAN, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the following entries are on the CIVIL ACTION DOCKET of the aforesaid Court, in the cause entitled:

C.A. 57-282-M

HANDY CAFE, INC.

v.

JUSTICES OF THE SUPERIOR COURT
JUSTICES OF THE SUPREME JUDICIAL COURT

1957

Mar. 21 Complaint filed.

22 Letters sent to Edward J. Kelly, Executive Clerk to Chief Justice of the Superior Court and Chester A. Dolan, Clerk of the Supreme Judicial Court in lieu of summons.

Apr. 9 Motion to Dismiss, filed.

16 Brief for defts., filed.

22 McCARTHY, J. Motion to dismiss taken under advisement.

McCARTHY, J. Motion to amend complaint allowed.

23 McCARTHY, J. MEMORANDUM filed. Deft's motion to dismiss allowed. Copies to counsel.

May 22 McCARTHY, J. Judgment entered. After hearing upon deft's motion to dismiss and in accordance with the Memorandum of the Court dated April 23, 1957, it is hereby ORDERED judgment for the deft. dismissing the complaint and for the deft's costs taxed at $. Copies to counsel.

June 5 Notice of Appeal filed by the Plaintiff, Handy Cafe, Inc. Copy of N/a/ sent to Edward F.

1957

Mahony, Esq., Asst. Atty. General, State House, Boston, Mass.

June 21 Original papers delivered to the U. S. Court of Appeals.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court, at Boston this 1st day of August, 1956.

JOHN A. CANAVAN
Clerk

By: (s) MIRIAM M. WYNN
Deputy Clerk

COMPLAINT.

Now comes the plaintiff in the above entitled action and states;

1. That this is an action brought under the provisions of the United States Code, Title 28 Section 1343(1) (2) and (3).

2. That this action is brought under the provisions of United States Code Title 42 sections 1983 et seq. Action is also based upon United States Code Title 28 section 1331.

3. That the plaintiff is a Massachusetts Corporation having an usual place of business in Somerville, Massachusetts.

4. The defendants are the members of the Superior Court and Supreme Judicial Court of the Commonwealth of Massachusetts.

5. That all of the acts herein alleged and omissions to act as alleged by the defendants were all done under the color of their respective offices held by each of them as Justices of the Courts of Massachusetts.

6. That all or substantially all of the acts of the defendants herein complained of and failures to act as required by law were done in pursuance of an agreed course of

action and plan by the defendants for the purpose of depriving the plaintiff of its rights and property guaranteed protected under the Constitution and Laws of the United States.

7. That the defendants have by their aforesaid improper course of conduct caused and permitted the plaintiff to be deprived of all or substantially all of its property without due process of law and without the measure of equal protection under the laws required of the defendants by virtue of their offices, such as is afforded to other subjects of the Commonwealth.

8. That the plaintiff has exhausted all reasonably expected avenues of protection under the Commonwealth of Massachusetts, without said protection being afforded to it.

9. That the defendants permitted to be filed in the Superior Court of Suffolk County a petition for the appointment of a receiver for the property of the plaintiff by the Costello Distributing Company Inc. a Massachusetts corporation having an usual place of business in Boston, Massachusetts.

10. That said petition on its face showed that the said Superior Court had no jurisdiction to hear or determine the issues raised by said petition or bill of complaint so called.

11. That said petition was based upon an alleged claim of the said corporation arising out of an action numbered 380861 at the Municipal Court of the City of Boston. Said claim was in form of a judgment illegal though it was. The said judgment so called was based upon a claim that was illegal in the first instance; was entered without notice of any kind to the present plaintiff in violation of the due process clauses of the U. S. Constitution; without notice of default; in violation of General Laws Chapter 231 section 58; without declaration or statement of cause of claim that could become the basis of a judgment without special

order of court and no such order of court was ever entered; a false return into court not by an officer qualified to serve process but by counsel for Costello of no satisfaction of claim while purporting to be the return of a duly authorized officer qualified to serve process in Massachusetts. Also after an acknowledgement of satisfaction in full of all claims was presented to the court said acknowledgement being under seal and without reservation. Said acknowledgement of full satisfaction under seal was approved by the Municipal Court for the City of Boston.

No proper demands were made upon the plaintiff under said judgment. No truthful return of service of process was made into court in the said cases, by the officers qualified to make said returns.

In brief there was no debt existing between the plaintiff herein and Costello Distributing Company. No notice of the claim or the proceedings later resolved into a so called judgment was ever given to it, an acknowledgement of satisfaction under seal was given and offered to and received by the Court prior to action by the Superior Court. There was not in fact the slightest basis for the appointment of a receiver for the property of the plaintiff by said justices of the Superior Court. Yet they made such an appointment and destroyed the plaintiff in its property almost completely.

12. At the time of said proceedings in the Municipal Court there was the protection of the United States Statutes staying and restraining all proceedings in the State Courts by virtue of an attempted destruction of the plaintiff by persons purporting to be creditors, by filing an involuntary petition in bankruptcy against it in 1954. During the period from the said filing of this petition and its dismissal the said so called judgment was obtained contrary to the protection granted under title 11 of the United States Code section 29 chapter 3, so called section eleven of bankruptcy

act, the said Costello proceeded without the knowledge of the plaintiff to obtain the said judgment.

13. Thereafter the plaintiff was subjected to the appointment of a receiver of its property without the hearing required by the United States Constitution. The appointment was made upon a petition of which the court had no jurisdiction of the subject matter the exclusive jurisdiction vesting in the Courts of the United States. The law of res adjudicata concerning claimants in bankruptcy proceedings was completely disregarded. The said Costello claim was considered in the bankruptcy proceedings prior to the orders of this court for dismissal of said proceedings and thereby said Costello Distributing Company was precluded by adjudication from prosecuting the plaintiff further in proceedings of the nature of bankruptcy, yet with the assistance of the defendants Costello was permitted to file such a petition in the State Courts of Massachusetts under the number 68595 eq. at the Superior Court for Suffolk County Massachusetts.

All of said proceedings were illegal and contrary to the Constitution and laws of the United States pertaining to the protection of subjects and of their property by the Courts and Judges of the several states.

13. Without a competent hearing under the laws of the United States the defendants Justices of the Superior Court of the Commonwealth deprived without adequate compensation and without due process of law the plaintiff herein of substantially all of its property and have refused to return it or to compensate it for said deprivation which amounted to confiscation of said property.

14. That the plaintiff has used due diligence to protect itself and its property from such confiscation by application within reason to said Courts of Massachusetts both Superior as well as Supreme Judicial Court, and has been deprived not only of all relief and protection of its rights

but has been deprived of any hearings as required by the Constitution of the United States as well as being deprived of all protection under the laws and Constitution of the Commonwealth of Massachusetts especially of those rights guaranteed by Part the First of the state Constitution.

15. For the purpose of presenting its grievances to Courts as required by law, rule and accepted procedures the plaintiff applied to the Superior Court for relief in case 68595 eq. and consistently was refused all relief and so refused without even the right of hearings being safeguarded. Such denials were almost completely if not entirely so without any opportunity being given of presenting facts to the Court for its consideration.

16. This was followed by a petition to vacate judgment. This was refused by one of said justices after he refused to hear the competent evidence and proof, said case was numbered 379797 at said court.

17. After attempts were made to obtain proper hearing of issues pertaining to said petition to vacate judgment were found to be futile in said case 497379 a writ of audita querela was commenced. The Court similarly refused to hear the required facts in this matter and denied without hearing the relief required by law. Said action was numbered 503224.

18. Thereafter the plaintiff instituted actions for abuse of process and other torts against the Costello Distributing Company, and Sheriff Sullivan for false return of process. While these matters have been pending before the Superior Court of Middlesex County and also Suffolk County by transfer the said defendants refuse to act upon the matters except to stay all proceedings and thereby defeat the rights of the plaintiff by refusal of the benefits of the Judicial Department of the Commonwealth of Massachusetts to said plaintiff. Said actions against the Costello Distributing Company is numbered 502755 at the Suffolk Superior Court.

The two actions for false return as against the Sheriff carry the numbers 502754 and 502756 at the Superior Court for Suffolk County.

19. The plaintiff sought the assistance of the Superior Court to compel the sheriff of Suffolk County to make a correct return of his process herein mentioned to the court. Said action in mandamus was entered in Middlesex County Superior Court. The Court therein refused to compel the sheriff to make a true return of process into court.

20. Thereafter the plaintiff sought the assistance of the Supreme Judicial Court for mandamus to coerce the Justice of the Superior Court to insist upon verity in the said return of process. The said Supreme Judicial Court refused to cause the issuance of an order of notice to the said Justice of the Superior Court whereby the issue of whether or not he should enforce the law of true returns or not could be heard and the grievance of the plaintiff herein put to rest. The said Court refused to even consider the said grievance and refused an order of notice.

21. The plaintiff sought redress of the grievance, the records of the Municipal Court of the City of Boston were sought to be corrected. Application was made to the said Court Justice Barron. The said Judge refused to correct the said records or to receive the proof of the falsity in the recording of an entry of judgment in favor of Costello Distributing Company as against the plaintiff herein.

Application was made of the Supreme Judicial Court for mandamus to said Court to properly record the doings of said court. The Supreme Judicial Court refused to consider the matter by refusing the issuing of an order of notice to the said Justice.

22. The plaintiff sought hearings upon evidence and upon merit of the several motions filed in the cases at the Superior Court heretofore mentioned and determination upon fact of the rights of the plaintiff. These hearings were

denied and application was made to the Supreme Judicial Court for orders coercing action by the defendants Justices of the Superior Court. To these it was customary to refuse consideration by refusing to issue orders of notice or subpoenas to the said justices.

23. The plaintiff sought protection through the medium of Bills of Complaint in Equity. Orders of notice were again the rule to be denied. The Court did not at any time hear through a single petition for relief by the plaintiff. Neither did the Superior Court hear through a single petition for relief or protection of its property. This with the possible exception of case of *Handy Cafe Inc.* v. *Costello Distributing Company*, under G.L.c. 214 sec. 22, which was denied and appeal taken to the full court. There in a rescript without opinion the full court divested itself of the problem without consideration of the merits between the parties.

24. The plaintiff has done about everything that could reasonably be expected of any litigant to obtain a fair hearing of its claim and rights from both the Justices of the Superior Court as well as the Supreme Judicial Court of Massachusetts and has been refused the very fundamentals of justice. The defendants have continually and consistently refused to hear the plaintiff on its grievances properly made to the defendants in their capacity as justices of the Courts of Massachusetts upon proper pleadings filed.

25. The refusals of the defendants to accord to the plaintiff the benefits of the judicial system of the state as established and in accordance with its adopted rules and laws applicable thereto has caused losses and damages to the plaintiff in excess of seventy-five thousand dollars. That said losses are the result of the unlawful actions of the defendants as well as the result of their unlawful refusals to act as required by law.

26. The actions aforesaid of the defendants were all had

without proper or adequate justification in law for them and without any right whatever to have caused them to occur.

27. That said actions of the defendants are a deprivation of the rights of the plaintiff under the Constitution of the United States especially under Amendment Fourteen and amendment Five thereto.

The papers by certified or attested copy mentioned herein are incorporated herein by reference. The original petitions and declarations in each of the cases referred to herein are incorporated herein by reference and actual copies are not presently available to the plaintiff for filing herewith but will be filed with the clerk of the United States District Court as soon as available. They are incorporated by reference.

Wherefore your plaintiff respectfully prays this Court:

1. To issue the required orders and directions to the defendants requiring that they comply with the provisions of the laws and Constitution of the United States by supplying to the plaintiff that measure of due process of law required.

2. That the defendants be directed to supply to the plaintiff herein equal protection under the laws with that supplied to other litigants in the Courts of Massachusetts.

3. That the losses caused the plaintiffs by the wrongful actions of the defendants be ascertained and adjudicated and that judgment enter therefor and execution issue thereon.

4. That this Court enter either by orders of a single judge or by orders of a three man court an injunction to the defendants in their official offices directing them to refrain from further depriving the plaintiff of its rights to fair hearings upon adequate notice of its grievances against the Costello Distributing Company Inc. and Sheriff Sullivan as contained in the Complaint and as to be proved

by proper hearing upon the receipt of proper and full evidence and proof.

5. That the defendants be directed to enter the orders required for the protection of the rights of the plaintiff upon the consideration of the competent evidence submitted and on adequate proof alone without regard to desires of the defendants not contemplated by the laws.

6. That the Court order and direct removal of the matters referred to herein to the United States District Court for the District of Massachusetts for hearing and disposition in the absence of adequate directions to compel the defendants to supply said hearings and determinations themselves.

7. For such other and further relief as to this Court seems meet and proper.

Subscribed to under the penalties of perjury.

HANDY CAFE INC.
by ANGUS M. MACNEIL, *President*
547 Somerville Ave.
Somerville, Mass.

MOTION TO AMEND COMPLAINT.

Now comes the plaintiff and moves to amend the complaint filed herein; by adding thereto the following paragraphs in further allegations of the same basic cause of action:

28. That this action is also instituted under the provisions of the United States Code Title 28 sections 2283, 1334, 1651.

29. That on or about March 29, 1954 a petition in involuntary bankruptcy was filed against the plaintiff under the number 263,54 in this court. That the petitioners in case 68595 at the Suffolk Superior Court were named and joined therein in the said case 263,54. That on June 11,

1954 after due consideration by this court the said petition was dismissed.

30. That the result of said dismissal was to adjudicate the rights of the parties therein to the relief sought in said petition and in any other petition seeking similar relief in this or any other court upon the same factual situation maintained at the time and used as the basis of said petition in this court namely case 263,54.

31. That the said rights of not only the actual petitioners in said case 263,54 but also all other creditors of Handy Cafe Inc. are bound by said adjudication of dismissal and are now not proper parties to institute or prosecute any petition seeking similar relief to that sought in case 263,54. The filing and prosecuting of the bill of complaint in case 68595 eq. at the Suffolk Superior Court constituted an attempt to relitigate the issues finally adjudicated and dismissed by the adjudication in case 263,54 and was beyond the powers or jurisdiction of said Superior Court of Suffolk County Massachusetts.

32. That this Court is obligated by law to protect the effect and benefits of the adjudications entered by it when said adjudications and benefits are subject to destruction by the action of a state Court. The action of the state courts of Massachusetts in receiving and retaining the bill of complaint in case 68595 eq. at Suffolk Superior Court constitutes a destruction of the effect of the said adjudication in case 263,54 and of the benefits conferred by said adjudication.

33. That the property of the Handy Cafe Inc. while said case 263,54 was pending was in custodia legis and freed from the interference of state court process. The plaintiff herein was also protected from harmful attacks by state court process during said period by virtue of Title 11 of the United States Code Section, 29 of Chapter 3 so called section 11 of the bankruptcy Act. While in the protective

custody of the United States Court, the plaintiff herein was subjected to the entry of the aforesaid so called judgment issuing from the Municipal Court of the City of Boston in case 380861 upon which the entire claims of the state courts are predicated. That the action of said state courts in entering said judgment issuing process thereon and appointing a so called receiver are in complete violation of the exclusive jurisdiction of the District Court of the United States under Title 11 of the U.S. Code and of Title 28 section 1334 of said Code.

34. The said actions aforementioned constitute an attempt to deny effect to the judgment of dismissal entered in case 263,54 in this court and for effectuating the benefits of said judgment this court is obligated to enjoin further interference with the effectiveness of its judgments by the defendants herein. In this way and in this way alone can effect be given to the judgment of this court entered in case 263,54 on June 11, 1954.

35. That the pleadings in each of the cases named or identified in this complaint are incorporated herein by reference for the reason that the actual attachment of them to the pleadings would unduly encumber the files of the Court with matters to which the Court may well take judicial notice and which may be furnished upon request at any time.

36. That the parties to these proceedings in both the state and federal courts mentioned herein in 1954 are the same and the issues in cases 68595 eq. at the state court and 263,54 at the District Court of the United States are also the same.

37. That this action may be considered as an ancillary action to protect the rights adjudicated in this court in case 54,263 in June 1954. As such this court has full powers to issue orders in the nature of mandamus and is obliged to do so if it is convinced that this is the only way of pro-

tecting the efficacy of the adjudication of June 11, 1954 in case 263 of 54.

38. The action of the Congress in reserving to the Federal Courts the exclusive jurisdiction of adjudications in all matters of bankruptcy and the jurisdiction of said federal courts having been invoked as to the matters pleaded in case 68595 eq. at Suffolk Superior Court foreclosed any possible jurisdiction in the state courts to entertain said bill of complaint and leaves the state courts completely without jurisdiction of said matter.

Wherefore your plaintiff further prays that

8. This Court or such Court in the Federal system as finally determines the rights of the parties enter appropriate orders and decrees sufficient to cause the return to the plaintiffs of their goods wrongfully confiscated by the defendants herein and that they be enjoined from further interference with the rights of the plaintiff as adjudicated in case 263 of 54.

Subscribed to under the penalties of perjury.

HANDY CAFE INC.

by

Its President

UNITED STATES DISTRICT COURT
FOR DISTRICT OF MASSACHUSETTS

263-54

In the Matter of

HANDY CAFE, INC.,
Alleged Bankrupt

ANSWER OF ALLEGED BANKRUPT

A petition having been filed in the above Court on the 10th day of April, 1954, praying that your respondent, the alleged bankrupt above-named, be adjudged a bankrupt, your respondent now appears and answers the said petition as follows:

a. Respondent admits the allegations contained in paragraphs one and two of the petition.

b. Respondent denies each and every allegation contained in paragraphs three and four of the petition.

Wherefore your respondent prays that a hearing may be had on said petition and this answer, and that the issues presented thereby may be determined by a jury.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

I, Angus M. MacNeil, Chief Financial Officer of the respondent named in the foregoing answer, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

(s) ANGUS M. MACNEIL
Chief Financial Treasurer

Subscribed and sworn to before me this 20th day of April, 1954.

(s) RITA T. KENNEDY
Notary Public

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In Bankruptcy
No. 263-54
In the Matter of

HANDY CAFE, INC.
Alleged Bankrupt

CREDITORS' PETITION

To the Honorable GEORGE C. SWEENEY,
Chief Judge of the United States District Court
for the District of Massachusetts

The petition of Sheridan & Fitzgerald, Inc., a Massachusetts corporation with an usual place of business in Boston, said District

and Cody Distributing Company, a Massachusetts corporation with an usual place of business in Boston, said District

and Whitehall Company, Ltd., a Massachusetts corporation with an usual place of business in Boston, said District,

RESPECTFULLY REPRESENTS:

1. Handy Cafe, Inc., a Massachusetts corporation with an usual place of business in Boston, said District has had its principal place of business at 723 Tremont Street, Boston, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Said Handy Cafe, Inc. owes debts to the amount of $1000, and is not a wage-earner or a farmer.

3. Your petitioners are creditors of said Handy Cafe, Inc. having provable claims against it fixed as to liability and liquidated in amount, amounting in the aggregate, in

excess of the value of securities held by them, to $500. The nature and amount of your petitioners' claims are as follows:

Sheridan & Fitzgerald, Inc.	
mdse sold and delivered	1600.39
Cody Distributing Company	
mdse sold and delivered	758.00
Whitehall Company, Ltd.	
mdse sold and delivered	919.11

4 Within four months next preceding the filing of this petition, the said Handy Cafe, Inc. committed an act of bankruptcy, in that it did heretofore, to wit, on or about the 18th day of March 1954 make or suffer, while insolvent, a transfer of a portion of its property, to wit, money in the sum of $24.65, to or for the benefit of Hub Glassware Co., Boston, said District, a creditor, for or on account of an antecedent debt, the effect of which transfer or payment will be to enable such creditor to obtain a greater percentage of its debt than some other creditor of the same class.

Within four months next preceding the filing of this petition, the said Handy Cafe, Inc. committed an act of bankruptcy, in that it did heretofore, to wit, on or about the 29th day of March, 1954, make or suffer, while insolvent, a transfer of a portion of its property, to wit, money in the sum of $380.91, to or for the benefit of Tremont Beverage Co., said Boston, a creditor, for or on account of an antecedent debt, the effect of which transfer or payment will be to enable such creditor to obtain a greater percentage of its debt than some other creditor of the same class.

Within four months next preceding the filing of this petition, the said Handy Cafe, Inc. committed an act of bankruptcy, in that it did heretofore, to wit, on or about the 29th day of March, 1954, make or suffer, while insolvent, a transfer of a portion of its property, to wit,

money in the sum of $380.91 to or for the benefit of Solomon Schneider, said Boston, a creditor, for or on account of an antecedent debt, the effect of which transfer or payment will be to enable such creditor to obtain a greater percentage of his debt than some other creditor of the same class.

WHEREFORE your petitioner's pray that services of this petition, with a subpoena, may be made upon said Handy Cafe, Inc. as provided in the Act of Congress relating to bankruptcy, and that it may be adjudged by the court to be a bankrupt within the purview of said Act.

SHERIDAN & FITZGERALD, INC.
By James M. Kofman
President and
Chief Financial Officer
CODY DISTRIBUTING COMPANY
By B. D. Forbes, *Treasurer*
WHITEHALL COMPANY, LTD.
By Morris J. Gordon, *Treasurer*
Petitioners.

GARGILL & SHRAIR, *Attorney*
10 State St., Boston, Mass. Address

State of Massachusetts
County of Suffolk, ss.

James M. Kofman, B. D. Forbes and Morris J. Gordon, the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

(s) JAMES M. KOFMAN
(s) B. D. FORBES
(s) MORRIS J. GORDON
Petitioners

Subscribed and sworn to before me as to B. D. Forbes and Morris J. Gordon this 9th day of April, 1954.

(s) BENJAMIN GARGILL
Notary Public

Subscribed and sworn to before me this sixth day of April 1954 as to James W. Kofman only.

(s) B—— I. GOLDBERG
Notary Public

LIST OF CREDITORS

Traveler's Insurance Co., 147 Milk St., Boston
Hub Glassware Co., 53 Portland St., Boston
United Liquors Ltd., 49 Lansdowne St., Boston
Branded Liquors Inc., 630 Commonwealth Ave., Boston
Sheridan & Fitzgerald Inc., 940 Commonwealth Ave., Boston
Elk Laundry Inc., 90 Kemble St., Roxbury
C. Pappas Co., Inc., 540 E St., Boston
Mr. Boston Distillers Inc., 1010 Massachusetts Ave., Cambridge
Whitehall Ltd., 90 Berkeley St., Boston
Price Bros. Co., 511 Medford St., Charlestown
Chas. Gilman & Sons Inc., 2419 Massachusetts Avenue, Cambridge
Cody Distributing Co., 54 Clayton St., Dorchester
Costello Distributing Co., Inc., 423 E 8th Street, So. Boston
Director of Internal Revenue, 174 Ipswich St., Boston
Dawsons, 12 Lansdowne St., Boston

I, Angus M. MacNeil, Chief Financial Officer of Handy Cafe, Inc., do hereby make solemn oath that the above list comprises all of the creditors of the said Handy Cafe, Inc., to the best of my knowledge, information and belief.

(s) ANGUS M. MACNEIL

Subscribed and sworn to before me this 25th day of May 1954.

(s) RITA T. KENNEDY
Notary Public

DISTRICT COURT OF THE UNITED STATES
DISTRICT OF MASSACHUSETTS

In Bankruptcy No.
263-54
In the Matter of
HANDY CAFE, INC.
Alleged Bankrupt

At Boston, in said District, on the 28 day of May, 1954 upon the motion of alleged bankrupt that proceedings be dismissed,

IT IS ORDERED by the Court, that a hearing be had on the 10th day of June, 1954, before said Court, at Boston, in said District, and that all creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the petition for adjudication should not be dismissed.

AND IT IS FURTHER ORDERED by the Court, that the Clerk shall send by mail to all known creditors, notices of this Order, addressed to them at their places of residence as states.

(SEAL)

WITNESS THE HONORABLE George C. Sweeney, Chief Judge of the said Court, and the seal thereof, at Boston, in said District on the 28th day of May, 1954.

(s) KATHLEEN M. O'DEA
Deputy Clerk

(SEAL)

I hereby certify that I have on this 28 day of May, 1954, sent by mail notices of the above order, as therein directed.

(s) KATHLEEN M. O'DEA
Deputy Clerk

At Boston, in said District, on the 11th day of June, 1954. Upon the foregoing Order, after ten days' notice thereof

to all creditors of record and to alleged bankrupt, and no one appearing to object:

It Is Ordered that the petition for adjudication be and it hereby is dismissed and all proceedings thereunder discontinued.

Witness the Honorable George C. Sweeney, Chief Judge of the said Court, and the seal thereof, at Boston, in said District on the 11th day of June, 1954.

(s) Kathleen M. O'Dea
Deputy Clerk

United States of America
District of Massachusetts, ss:

I, John A. Canavan, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed and foregoing is a true and full copy of the original Answer of Alleged Bankrupt filed on the 23rd day of April, 1954; Creditors' Petition filed on the 9th day of April, 1954; List of Creditors filed on the 25th day of May, 1954; Order entered on 11th day of June, 1954, in the cause entitled:

In the Matter of

Handy Cafe, Inc.
Alleged Bankrupt

and numbered 263-54 on the Bankruptcy Docket, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Boston this 1st day of August, A.D. 1957.

John A. Canavan
Clerk.
By Eleanor F. Taylor
Deputy Clerk.

(SEAL)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

To the Sheriffs of our several Counties, or their Deputies, or any Constable of any City or Town within our said Commonwealth:

Greeting.

WE COMMAND you to attach the goods or estate of Handy Cafe, Inc., a corporation duly established by law and having an usual place of business of Boston in our County of Suffolk to the value of Three Thousand Dollars: and summon the said Defendant (if it may be found in your precinct) to appear before our Justices of the Municipal Court of the City of Boston, to be holden at Boston, within our County of Suffolk, for civil business, on Saturday, the 17th day of April, A.D., 1954, at nine of the clock in the forenoon: then and there to answer to Costello Distributing Company, Inc., a corporation duly established by law and having an usual place of business of South Boston in an action of Contract.

To the damage of the said Plaintiff, (as it says) the sum of Three Thousand Dollars, as shall then and there appear; with other due damages.

And have you there this Writ with your doings therein.

Witness, ELIJAH ADLOW, Esquire, at Boston aforesaid, the 23rd day of March, in the year of our Lord one thousand nine hundred and fifty-four.

JOHN E. HURLEY, *Clerk.*

July 31, 1957

A true copy, ATTEST:

SIMON QUEEN, *Asst. Clerk.*

OFFICER'S RETURN.

Suffolk, ss. Boston, April 2, 1954

By virtue of this Writ, I this day attached a chip as the property of the within named defendant corporation Handy Cafe Inc. and afterwards on the same day summoned it to appear and answer at Court as within directed by delivering to Susan Bailey, its Clerk, and the officer in charge of its business a summons together with an attested copy of the within writ. In the service hereof it was necessary and I actually used a motor vehicle 7 miles.

Fees.

Service,	$2.00
Copy	.50
Travel	.70
Motor Vehicle	1.05
	$4.25

(s) WILLIAM J. McMORROW
Deputy Sheriff

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Municipal Court of
The City of Boston

COSTELLO DISTRIBUTING COMPANY, INC.

v.

HANDY CAFE, INC.

PLAINTIFF'S DECLARATION

Count 1:

And now comes the plaintiff in the above entitled action and says that the defendant owes it the sum of $2,036.59 for goods bargained and sold by the plaintiff to the defendant.

Count II:

And now comes the plaintiff in the above entitled action and says that the defendant owes it the sum of $2,036.59 according to the account hereto annexed and marked "A".

By its Attorney,

(s) SAMUEL LEADER

Account Annexed "A".

Costello Distributing Co. Inc., Cr.

TO: Handy Cafe, Inc., Dr.

Goods sold and delivered between the 31st day of July, 1953 and the 15th day of December, 1953. $2,036.59

July 31, 1957

A true copy, ATTEST:

SIMON QUEEN, *Asst. Clerk.*

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

To the Sheriffs of our several Counties, or their Deputies Greeting.

WHEREAS, Costello Distributing Company, Inc. a corporation and having an usual place of business of South Boston, Plaintiff, on the thirtieth day of April, A.D., 1954 before our Justices of the Municipal Court of the City of Boston, holden at Boston, within our County of Suffolk, for civil business, recovered judgment against Handy Cafe, Inc., a corporation and having an usual place of business of Boston in our County of Suffolk, Defendant, for the sum of two thousand thirty-six dollars and fifty-nine cents, debt or damage, and nine dollars and fifty cents, for charges of suit, as to us appears of record, whereof execution remains to be done:

WE COMMAND you, therefore, that of the money of the said defendant or of its goods or chattels, lands or tenements within your precinct, at the value thereof in money, you cause to be levied, paid and satisfied unto the said

plaintiff the aforesaid sums, being 2046 dollars and 00 cents, in the whole, together with interest thereon from the said date; and also that out of the money, goods or chattels, lands or tenements of the said defendant you satisfy yourself for your own fees.

Hereof fail not, and make return of this writ with your doings thereon into the clerk's office of our said Court, at Boston, within our County of Suffolk, within twenty years after the date of the said judgment, or within ten days after this writ has been satisfied or discharged.

Witness, ELIJAH ADLOW, Esquire, at Boston, aforesaid, the eighteenth day of May, in the year of our Lord one thousand nine hundred and fifty-four.

(s) JOSEPH L. PIERCE, *Asst. Clerk*

(s) SIMON QUEEN, *Asst. Clerk.*

July 31, 1957

A true copy, ATTEST:

OFFICER'S RETURN

Suffolk, ss. Boston, July 2, 1954

By virtue of this Execution on the 1st day of June 1954, I made demand upon the within named debtor corporation, Handy Cafe Inc. that it pay over to me the amount of the within execution together with my fees, or that it exhibit to me sufficient Real or Personal property belonging to said debtor corporation, subject to be taken on execution, and upon which the might levy and satisfy this execution, together with my fees, by delivering to Angus MacNeil Esq., its President and the officer in charge of its business, an attested copy of this execution, with my said demand indorsed thereon, at the same time exhibiting to said Angus MacNeil this execution, but said debtor corporation has neglected and refused and still neglects and refuses for more than thirty days after my said demand to comply with my said demand,

Fees.—

Demand	$2.00
Travel	.10
Copy	.50
	$2.60

(s) THEODORE H. O'BRIE.
Deputy Sheriff.

No. 380861

C AD DAM. 3000.

v.

HANDY CAFE INC.

Apr 30, 1954	Judt. for Plff.	
	Damages	$2036.59
	Costs	9.50
		$2046.09

EXON. MAY 18, 1954

Mar. 9, 1955. Exon. returned.

Oct. 20, 1955 Deft. files motion for orders and directions to the Clerk.

Oct. 25, 1955 Deft's. Motion for order and directions to Clerk of Court to strike from docket all records and entries that the above action has gone to Judgment heard and denied, Barron, J.

Oct. 25, 1955 Defendant files Requests for Rulings.

Oct. 31, 1955 Defendant files Draft Report.

May 7, 1956 Deft's. Motion for leave to file a photostatic copy or certificate of the Clerk of the Supreme Judicial Court of an acknowledgment of Satisfaction on file in the Supreme Judicial Court #5565 and leave to substitute the original acknowledgment when available, filed and allowed, Tomasello, J.

May 7, 1956 Certificate of Clerk of Supreme Judicial Court—F. J. Quinlan, re: Exhibit #11 Case #5565—Supreme Judicial Court filed.

May 7, 1956 Deft. files motion for entry of satisfaction upon execution returned to Court and upon the records of the Court.

May 10, 1956 Deft's. Motion for endorsement of Execution as "satisfied" allowed, Tomasello, J.

May 10, 1956 On Plaintiff's Oral Motion order of allowance on motion for endorsement of Execution as "satisfied" is hereby revoked Tomasello, J.

May 10, 1956 @ 12:56 P.M. Defendant files "Appeal to the Superior Court from the allowance by the Court of the plaintiff's Oral Motion to revoke allowance of Motion for endorsement of Execution and endorsement on record entered May 10, 1956."

May 14, 1956 Defendant's Motion for entry of Satisfaction upon Execution dismissed for lack of prosecution —Lewiton, J.

June 21, 1957 Defendant files Motion to vacate record of revocation of Orders of Court.

July 2, 1957 Parties before Court; Motion to vacate record of revocation of order of Court heard and Court refuses to pass on Motion as subject matter is now pending in receivership proceedings in the Superior Court, Adlow, C.J.

Defendant's requests for rulings, not acted upon. (See memo on file.)

July 2, 1957 Defendant files Claim of Report.

Suffolk, ss.

Municipal Court of the City of Boston
for Civil Business

I hereby certify that the above is a true copy to date of the Docket entries in the action entered in said Court, numbered 380861 of the year 1954, wherein the said Costello Distributing Company, Inc. is named Plaintiff, and the said Handy Cafe, Inc. is named Defendant.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at said Boston, this second day of August in the year of Our Lord one thousand nine hundred and fifty-seven.

SEAL

(s) Simon Queen, *Asst. Clerk.*

Commonwealth of Massachusetts

Suffolk, ss.

To Handy Cafe, Inc., a corporation with an usual place of business in Boston, County of Suffolk,

Defendant

[L.S.]

Greeting

Whereas a suit in equity has been begun against you in our Superior Court, within and for the county of Suffolk, by

Costello Distributing Company, Inc., a corporation duly established by law and having an usual place of business in said Boston,

Plaintiff

We Command You, if you intend to make any defense, that on the first Monday of September next, which Monday is the return day of this subpoena, or within such further time as the law allows, you do cause your written appearance to be entered and your written answer or other lawful pleading to be filed

in the office of the clerk of said court at Boston in said county first above named, and further that you defend against said suit according to law, if you intend to make any defense, and that you do and receive what the court shall order, adjudge and decree therein.

Hereof fail not, at your peril, as otherwise said suit may be adjudged, and orders and decrees entered therein, in your absence.

We Also Notify You that application has been made in said suit, as appears in the bill of complaint filed therein, for a preliminary injunction and for the appointment of a Receiver and that a hearing upon such application will be held at the court house at Boston in the county of Suffolk, in the first session without jury of our said court on Wednesday the fourth day of August A.D. 1954, at 10 o'clock A.M., at which you may appear and show cause why such application should not be granted.

Witness, John P. Higgins, Chief Justice of our Superior Court, the twenty-sixth day of July in the year of our Lord one thousand nine hundred and fifty-four.

Thomas Dorgan, *Clerk.*

A true copy,
Attest:

(s) Theodore H. O'Brien
Deputy Sheriff.

COMMONWEALTH OF MASSACHUSETTS

Suffolk: ss. Superior Court
In Equity

COSTELLO DISTRIBUTING COMPANY, INC.

v.

HANDY CAFE, INC.

BILL OF COMPLAINT

1. The petitioner says that it is a corporation duly established by law and having an usual place of business in Boston, Suffolk County, Massachusetts and brings this bill in its own name and behalf and in behalf of such other creditors of the respondent corporation as may join in and become parties to this suit against the Handy Cafe, Inc., having an usual place of business in Boston.

2. The petitioner says that on the 30th day of April, 1954, it has recovered judgment against the respondent in the Municipal Court of the City of Boston, upon which judgment execution issued on the 18th day of May 1954, in the sum of $2,036.59, damages and $9.50 costs, making a total of $2,046.09.

3. The petitioner says that it has committed the execution to the sheriff of the County of Suffolk, Commonwealth of Massachusetts who on the first day of June 1954 made a demand on the debtor corporation that it pay over to said sheriff, the amount of the execution, together with fees, in the sum of $2.60, or that the said respondent exhibit sufficient real or personal property belonging to the debtor corporation subject to be taken on execution, and upon which levy may be made to satisfy the execution, and the debtor corporation neglected and refused and still neglects and refuses for more than thirty (30) days after said demand, to comply with the demand of the sheriff.

4. The petitioner says that the respondent is indebted

to other persons and corporations for varying amounts, and that said respondent is unable to meet its obligations as the same mature in the ordinary course of business, and attempts to collect debts now due by legal proceedings are impossible. The respondent is without sufficient cash capital or quick assets to carry on its business and without adequate credit, and is unable to raise by loan or otherwise the money immediately necessary for carrying on the business.

5. The petitioner says that other creditors are threatening to and will bring suits in other proceedings for the enforcement of their claims against the assets of the respondent corporation, so that, said corporation and its property will unless receivers are appointed as hereinafter requested be subject to a multipulicity of suits, and litigation of various kinds in varying places, whereby the assets of the respondent corporation are liable to be subjected to conflicting claims, and thereby dissipated and wasted, to such extent that the same will be insufficient to pay in full the claims of creditors of the respondent corporation.

6. The petitioner says that since June 1, 1954 when demand was made on the respondent corporation for the payment of its debt, no attempt and no amount of any kind has been paid, and that the execution remains wholly unsatisfied.

7. The petitioner is informed and believes and therefore avers and states that another creditor of the respondent corporation has an execution in the hands and possession of the sheriff in and for the County of Suffolk against the respondent in this action to make demand thereon for the payment of its debt.

Wherefore, the Petitioner Prays:

1. That the respondent corporation be restrained and

enjoined from selling, transferring, assigning, conveying or in any manner encumbering any of its assets or property.

2. That until further order of this Court, the respondent corporation be enjoined and restrained from paying any of its indebtedness.

3. That a receiver be appointed for the respondent corporation.

4. That said receiver be authorized

(a) To take charge of the respondent's estate, property and effects;

(b) To collect the debts, obligations and property due the respondent corporation;

(c) To prosecute and defend suits in the name of the respondent corporation;

(d) To do all other acts which may be necessary and desirable for a final settlement of the affairs and business of the respondent corporation.

5. For such other and further relief as to this Court seems equitable.

COSTELLO DISTRIBUTING COMPANY, INC.
By EDWARD F. BARRY, *Treasurer*

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. July 19, 1954

Personally appeared Edward F. Barry, Treasurer of the petitioner in the above entitled Bill and made oath that the allegations set forth in the Bill are true, and those on information and belief, he believes to be true.

JAMES P. LONG
Notary Public

(Notarial Seal)

COPY.

ATTEST:

(s) THOMAS F. STANTON
Asst. Clerk.

SUPERIOR COURT
Suffolk, ss.
Boston July 26, 1954

Notice ordered issued hereon returnable at Boston First Session without Jury on Wednesday the Fourth day of August 1954.

To show cause why a Receiver should not be appointed.

Attest: JOSEPH F. TOOMEY
Asst. Clerk.

Suffolk, ss.
August 18, 1954

Upon payment to the Clerk of the sum of $5.00. A Preliminary injunction is ordered to issue under the 1st & 2nd prayers of the Bill of Complaint to continue in force until further order of court.

By the Court (O'Connell, J.)
RICHARD A. MCLAUGHLIN
Assistant Clerk

Fee paid
8/19/54
E.J.K.

COPY.

ATTEST:—

(s) THOMAS F. STANTON
Asst. Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Superior Court.
In Equity.

No. 68595 Eq.

COSTELLO DISTRIBUTING COMPANY, INC.

v.

HANDY CAFE, INC.

DECREE APPOINTING PERMANENT RECEIVER.

This cause came on to be heard upon notice to show cause why a permanent receiver should not be appointed as prayed for in the bill of complaint, and after hearing was argued by counsel, and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED and DECREED:—

1. That until further order of the court, Benjamin Gargill, Esq., of Boston, be and hereby is appointed permanent receiver of the estate, property, moneys, debts and effects of every kind and nature of or belonging to the defendant Handy Cafe, Inc.; and he is hereby authorized and directed to collect, get in, and take charge of all and singular thereof, and to hold the same subject to the further order of the court.

2. That the said defendant, its officers, servants, agents, and attorneys, and each of them, are hereby required and ordered to deliver to said permanent receiver all the property, moneys, stock in trade and effects of every kind and nature, belonging to the said defendant in their hands, possession, or control, together with all books, deeds, documents, vouchers, and papers relating thereto, and the said defendant and its officers, servants, agents and attorneys, and each of them, are hereby restrained and enjoined from collecting any of the debts or accounts due to the said defendant and from using, spending, injuring, conveying, transferring, selling, or in any manner disposing of or en-

cumbering any of the effects or property aforesaid, except to deliver them into the hands of said permanent receiver.

2(a). That until further order of the Court, the said Permanent Receiver is authorized to operate said business, to incur liabilities and to do all things necessary and incidental in relations to the conduct of said business.

3. That said permanent receiver shall deposit all moneys received by him in some national bank, trust company or savings bank in his name as permanent receiver, but no disbursements of said funds shall be made by said permanent receiver without further order of the court excepting disbursements for liabilities incurred in the course of his operation of the business.

4. That the said permanent receiver is required to file in the office of the clerk of this court, within thirty days after the date of entry of this decree, under oath, a detailed inventory of the property of which he has possession, or the right of possession, with the estimated values thereof, together with a list of the encumbrances thereon; and also a list of the creditors of the receivership and of the said defendant, so far as known to him.

5. That the said permanent receiver, before entering upon the performance of his duties under this decree, shall give a good and sufficient bond, in form running to the Commonwealth of Massachusetts, for the faithful performance of his duties, in the penal sum of $5000.00, to be approved by the court; and upon receipt of assets by said permanent receiver to an amount or value exceeding the penal sum of said bond said permanent receiver shall forthwith apply to this court for an order determining whether or not the penal sum of his bond shall be increased to such amount as the court may deem appropriate.

6. That either of the parties, or the said permanent receiver, may apply to the court from time to time for

such further directions, orders, or decrees as may be necessary.

By the Court, (Hurley, J.)
LEO A. REED,
Assistant Clerk.

Entered May 10, 1955.
COPY,
ATTEST:—

(s) THOMAS F. STANTON,
Asst. Clerk.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Superior Court.
In Equity.
#68595

COSTELLO DISTRIBUTING COMPANY, INC.

v.

HANDY CAFE, INC.

REQUEST OF FINDING OF MATERIAL FACTS

NOW COMES HANDY CAFE INC. AND REQUESTS:

Findings of material facts orders made on May 10, 1955, by Court in absence of counsel for Handy Cafe Inc. and without notice of hearing thereon before issuance.

By its attorney,
A. M. MACNEIL

COPY
ATTEST:—

(s) MARY F. KILEY
Asst. Clerk.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Superior Court in Equity
Supreme Judicial Court

HANDY CAFE INC.

v.

FELIX FORTE AND JUSTICES OF THE SUPERIOR COURT.

PETITION FOR WRIT OF MANDAMUS.

Filed October 26, 1955.

Now comes the petitioner in the above entitled action and states that:

1. It is a Massachusetts Corporation having a usual place of business in Boston, Mass.

2. The individual respondent is the justice of the Superior Court assigned to the motion session as prescribed by statute. The other respondents are the Justices of our Superior Court.

3. The said Justices or one of them entered on May 10, 1955 an order without any legal justification therefore for the appointment of a receiver for the petitioning corporation.

4. Thereafter the said respondents were on several occasions requested by the petitioner to furnish instructions and directions whereby the petitioning corporation could obtain control of its property in accordance with the terms of the said decree which provided that the parties may at any time apply to the court for directions.

5. The respondents failed and refused to give said directions for the release of the property of the said petitioner although there is no justification in law for refusing so to do.

6. The retention of the property of the petitioner is without any legal justification whatever.

7. Appeals have been taken from the refusals of the

Court to give such directions but said Justices have so delayed action on said appeal that all practical good from said appeal has been lost. Said delay and interfering tactics have been employed by the respondents intentionally for purpose of delaying and defeating the petitioner in its attempt to obtain a speedy and necessary review to said action.

8. That in the opinion of your petitioner your respondents have injected every obstacle possible in the way of your petitioner in its attempt to obtain judicial review of the illegal and unjustified action of your respondents.

9. That unless your respondents are compelled by orders of this court or of some court of superior jurisdiction they will hinder and delay intentionally your petitioner in its attempts to recover its property taken from it without due process of law and in contravention of its rights.

10. That on October 25, 1955 another action tending to assist in the recovery of its property was illegally defeated by the action of Judge Lurie of said court.

11. That several of said Judges have planned certain procedures whereby the right to retain and regain its property would be prejudiced.

12. That although the laws of this Commonwealth make a receivership only an ancillary proceeding to the principal proceeding the Judges of the Superior Court have made in this case the receivership the principal end to be sought in this litigation.

13. That demands have been made time and time again for the release of this property and for the program under which this may be accomplished and for directions as required by the decree of appointment upon application of the petitioner, yet the respondents have failed to do so

14. That although the statutes make the possession of some of the assets of this corporation non renewable in the hands of the receiver, yet the court granted an order

to the receiver without notice to the petitioner ordering said renewal. Said action permitted with the approval of the respondents the commission of another illegal act.

Wherefore your petitioner prays that the respondents be ordered to show cause why a writ of mandamus should not issue compelling them to.

1. Give to the petitioners reasonable directions whereby it can retake its property.

2. Issue a writ of mandamus compelling the respondents to order the release of the property of the petitioner to it.

3. To refrain from impeding the progress of the presentation of the petitioners appeals to this court for determination.

4. To issue a writ of mandamus compelling the respondents from violating the law further in the possession and management of the petitioners property.

5. That this court order the respondents to obtain forth. with an adequate bond or other security for the protection of the petitioners property and for reimbursement in the event of whole or partial destruction while in the hands of the receiver.

6. For such other relief as to this court seems meet and just.

By its attorney

(s) Angus M. MacNeil

A true copy.

[Seal] Attest.

April 4, 1957 *Clerk*

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Supreme Judicial Court

HANDY CAFE INC.

v.

COSTELLO DISTRIBUTING COMPANY

PETITION UNDER G.L. c. 214 sec. 22.

Filed Nov. 14, 1955.

Now comes Handy Cafe Inc. and states that;

1. It is a Massachusetts corporation having an usual place of business in Boston.

2. The respondent is a Massachusetts Corporation having an usual place of business in Boston.

3. That the respondent has brought a bill in equity against the petitioner seeking the appointment of a receiver and has obtained said appointment.

4. An appeal has been claimed from said appointment.

5. Thereafter the court has entered on November a decree ordering the sale of the assets of the petitioner and on the basis of said decrees your petitioner applies to this court for temporary assistance until said appeals may be heard in the full court.

6. The petitioner believes and therefore avers that the said decree appointing the receiver and the decree for sale of assets are contrary to law.

7. The petitioner also believes and avers that the said decrees are in absolute violation of every right guaranteed by the constitutions of the United States and of the sovereign state of Massachusetts.

8. It appears from the record that the said appointment is and was illegal for the following reasons:

a) The petition for said appointment was based on a claim under GLc. 156 sec. 52. This section could not apply for the following reasons:

b) The petition was the result of a conspiracy of the several liquor wholesalers who had violated the laws of this commonwealth by allegedly selling liquor and extending credit to liquor retailers for more than ninety days.

c) The claim upon which Costello was basing its action was one involving an alleged extension of credit by a liquor wholesaler to a liquor retailer for a period of more than ninety days. See declaration a copy of the body of said declaration is attached hereto. See especially the case of *Sullivan* v. *Cann's Cabins*, 309 Mass. 519. The very evils sought to be prevented by GLc. 138 sec. 25 are being exploited to the utmost degree in this case not only by the passive overlooking of it but by the active participation in them by the orders and decrees of this court on appointing a receiver.

d) That in pursuance of their scheme to put out of business and to destroy the petitioner said liquor wholesalers of which the respondent was one planned to cause a petition in bankruptcy to be filed against the petitioner. This was done but the petitioner was able to obtain a dismissal of said petition. The effect of this dismissal was that the claims dismissed were res adjudicata and the said claimants were prohibited from further pursuing and harassing your petitioner.

e) The part played by your respondent in this scheme was to bring action against your petitioner while said bankruptcy petition was pending so that it would be unable to cope with everything at once. This your respondent did.

f) Although by Federal law all suits in State Courts are Stayed during the pendency of a petition in involuntary bankruptcy prior to adjudication or dismissal your respondent pressed an action against your petitioner contrary to law. This action terminated in a form of judgment as referred hereafter.

g) Your respondent caused a writ to be served upon

a stranger to the petitioner and the officer returned that he had served the petitioner. Said return was false and untrue. Action is now pending in this court to compel the Court at Middlesex to compel the sheriff of Suffolk County to make a true return to his writ. His counsel has admitted that the return was false. The said sheriff has claimed that he does not want to correct his return but wants to leave the petitioner to recover against his bond. No contention has ever been made by the respondent or its attorneys that the petitioner had any knowledge of the suit before the alleged entry of judgment. Yet the respondent continued pressing and obtained a judgment by default according to the records.

h) The respondent in its zeal to obtain a judgment to which it was not entitled filed a declaration to said action. The declaration was one for two counts, each claiming in excess of $2,000.00. The writ had an ad dammum of three thousand dollars. Without notice to the petitioner the then defendant as required by GLc. 231 sec. 58, a default was entered.

i) Thereafter contrary to all laws a judgment was noted in the docket. No merger of the two counts in the declaration was made by the respondent nor was any waiver filed, nor was any order of court made for entry of judgment made. The case was never ripe for judgment yet such an entry was made on the docket. No military affidavit was filed at court. How the clerk disposed of the second of the counts has not been possible to ascertain. Whether he entered judgment on the first or the second count has not been possible to find out. Yet judgment was recorded without order of court for $2036.59.

j) Following the obtaining of the judgment as aforesaid the respondent petitioned for the appointment of a receiver. Although it had received all or nearly all that it claimed due as a matter of settlement yet it falsely on

March 9, 1955 filed in court the execution noting that it had been in no part satisfied. On April 18, 1955 it executed and delivered to the petitioner a release of all claims and demands under seal.

k) However two days later it pressed a motion for the appointment of a permanent receiver for the corporation and obtained said appointment. Said motion was heard on April 20, 1955. The respondent being the only petitioner for such appointment.

l) Immediately thereafter the petitioner applied to the court for the release of its property from the receiver and requested as provided in the decree appointing him for so doing asking for the terms under which the court would order release of its property to it. This the court refused to do. It would not set any terms for said release. This request has been repeated several more times but always with the same result.

m) Thereafter the petitioner requested the court to enter an order releasing said property to its rightful owner upon the filing assents of creditors and surety company bonds for those not assenting to protect against any debts or even claims however fictitious they proved to be. This the Court refused to do.

n) Request was made for any terms under which the property of the Handy Cafe Inc. could be obtained by it and this also was refused by the court.

o) Whereupon the Handy Cafe Inc. moved for vacation of the appointment of the receiver. Although this motion has been filed for months and assigned for hearing on several occasions it has never been heard and won't be heard by the Court. Application for a writ of Mandamus is now pending before this court to compel the Superior Court to hear and decide fairly said motion.

p) Petition to vacate judgment so obtained was filed and heard by the municipal Court but on the conflicting

stories given by the respondent counsel before the Superior Court and that given before the Municipal Court it was agreed to transfer said case to be tried with the case for the appointment of a receiver to be heard in the Superior Court. This was done and the case assigned for hearing before Judge Brogna with #68595. However the pretrial judge countermanded the said order and sent the petition to vacate to Judge Lurie to be heard without the motion to vacate. Without opportunity to prepare for a divided hearing the matter was heard by Judge Lurie and he ruled against Handy Cafe Inc. and said case will be before the Supreme Court on Appeal shortly. The perusal of the record in that hearing will be extremely interesting.

q) At the remainder of the hearing scheduled before Brogna, J. contrary to all laws and requirements he ordered a sale of the assets of this corporation. No opportunity has been given to the owners to regain their property under any terms and conditions. Your petitioner believes that this action is arbitrary action of the worst kind.

r) That the corporation has been one of the best paying of its kind in the city of Boston. In fact it was making net about $700.00 per week. Even while the receiver has been in charge of operations, and in spite of the fact that he has so carelessly operated it nevertheless he has accumulated out of earnings about $5,000.00. This in spite of the fact that the company was doing about $3,000.00 gross sales at the time of his taking over and the business has dropped to about $1700.00 per week since he took over. This accumulation out of profits has been made in spite of the fact that he so negligently operates the business that it has been declared off-limits for service personnel although it was on limits and approved while in the control of its owners.

s) Many other similar experiences could be recited but

the above should suffice to demonstrate the difficulties the owners are having because of the attempts and collusions of the liquor wholesalers who care little for the law.

t). The attempts of the petitioner to present this matter to the Supreme Court have been thwarted in like manner for months. The appointment of receiver by Hudson, J. was on March 9, 1955. Here almost nine months later your petitioners are still trying to obtain the estimate for preparation of the record for presentation to the full court and no sign of it is in the offing yet.

u) But when the petition for sale of assets was presented and pushed the Court bent over to assist in making such an order. Wherefore your Petitioner prays that this court order the sale of assets of Handy Cafe Inc. stayed until after the determination by the full Court of the Appeals of Handy Cafe Inc.

2. That this Court order the property of Handy Cafe Inc. returned to it until such time as the Court is able to obtain any allegations that in any way substantiate any right on the part of the court to cause the property of Handy Cafe Inc. to be taken from it and entrusted to the care of a receiver and said allegations in some way substantiated.

3. That this Court terminate the illegal and unjust interference with the business of Handy Cafe Inc. by a receiver without the slightest suggestion of insolvency or inability to pay its debts. That the Court enjoin further interference with the business of Handy Cafe Inc. by the Superior Court unless and until there appears to be some creditor who is to be protected or until there appears to be some wrong caused by Handy Cafe Inc. that requires correction.

4. That this Court order the affairs of Handy Cafe Inc. let alone by illegal interference by the courts and by liquor wholesalers until they have some alleged grievance en-

titling them to interfere with said petitioner, such as not appeared heretofore.

Subscribed to under the penalties of perjury.

HANDY CAFE INC.,
By (s) A. M. MACNEIL
A true copy
[SEAL] Attest:
March 29, 1957 *Clerk*

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Supreme Judicial Court

HANDY CAFE INC.

v.

JOHN V. SULLIVAN AND THE JUSTICES OF THE SUPERIOR COURT

PETITION FOR WRIT OF MANDAMUS.

Filed Nov. 14, 1955.

Now comes the petitioner and states that:

1. It is a Massachusetts Corporation having an usual place of business in Somerville and in Boston.

2. The respondent is a resident of Boston and he is a Judge of the Superior Court of this Commonwealth and is presently in charge of the Session without Jury at Middlesex County.

3. That in March of 1954 one Samuel Leader an attorney of this state caused to be placed in the hands of Frederick R. Sullivan the sheriff of Suffolk County a writ to be served upon your petitioner in Boston, in an action of contract returnable to the Municipal Court of the City of Boston on April 29, 1954.

4. That the said sheriff did not cause said process to be served upon the petitioner or any agent of it. However he did cause a return to be made upon said process indicating that he did serve said writ as directed therein. And he

returned said writ with said false return to be returned to Court.

5. One of the precepts of said writ was that the sheriff return into court said writ with his doings thereon. This he did not do, in violation of the mandate to him contained in said writ.

6. Extreme damage has been caused by said false return and the default and judgment entered thereon as a result of said false return.

7. Your petitioner has applied to your respondent for an order or a mandamus to compel your said sheriff to make a correct return to said process as required by law. Case #198505 at Middlesex.

8. Your respondent in violation of his duty has failed to order said sheriff to comply with his duty and to perform his said duty of returning his said writ into Court with his doings entered thereon.

9. The respondent has failed to order the issuance of a writ of mandamus to issue as prayed for in the petition filed in court to compel compliance with his duty by the said sheriff.

10. That the request made of the said respondent did not involve any judicial action on the part of the court. The entire obligation of the respondent consisted in the requiring the sheriff to perform his undisputed duty. No substantial question of law is involved in this matter. The act requested was ministerial only and not judicial. The duty of the sheriff is clearly stated in the law and in said process. There is no room for doubt as to his duties in executing the said writ.

11. There is no doubt of the obligation of the Justices of the Superior Court to protect the rights of everyone properly submitted to him for said protection. No discretion is vested in the respondent to refuse to compel compliance by the Sheriff of Suffolk County with his duties.

12. As a matter of law and without a reasonable doubt the respondent was obligated on a showing that the sheriff was not performing his duty and thereby injuring a party, to require a full and accurate compliance with his duties by said sheriff. This he failed to do. Demand has been made upon him for protection and for orders compelling performance of duty without assistance being so given.

13. Demand was made in accordance with the needs of the case without results.

14. Immediate action is required in order to prevent substantial and irreparable damage and loss to your petitioner.

15. Your petitioner has no adequate and complete remedy other than by Mandamus.

Wherefore your petitioner prays that an order issue to your respondent to show cause why a writ of mandamus should not issue against him directing and compelling him to protect the rights of your petitioner by ordering the sheriff of Suffolk County to make a correct return of his doings on the writ delivered to him for service upon the petitioner in March 1954 in favor of Costello Distributing Company and numbered 380861 at the Municipal Court of the City of Boston, as well as to remove therefrom the erroneous and false return now included thereon by said sheriff.

Subscribed to under the penalties of perjury.

HANDY CAFE INC.

by (s) A. M. MACNEIL

Affidavit of Handy Cafe Inc.

Now comes Angus M. MacNeil President of Handy Cafe Inc. and states in behalf of said Handy Cafe Inc. under oath or under the penalties of perjury as prescribed by the rules of Court that no records of said corporation indicate in any way that Susan Bailey ever was an Officer of this corporation in charge of its business or ever was clerk of this corporation. That in March 1954 at the time of the alleged service of the writ in case #380861 at the Municipal Court of the City of Boston a duly elected clerk was holding said office and that said officer was not Susan Bailey. That at said time a person was in charge of its business as required by law, it being engaged in the business of a liquor retailer licensee under the provisions of General Laws chapter 138 and that said chapter was complied with by the appointment of a person in charge of its business and that said person was not Susan Bailey. That at said time Susan Bailey was a stranger to this corporation and was neither an employee of it nor a stockholder of it nor an officer of it nor in any way connected with said corporation. That no knowledge of the existence of this action #380861 was had by Handy Cafe Inc. until after judgment was allegedly entered in said case.

Subscribed to under the penalties of perjury this 31st day of October 1955.

Handy Cafe Inc.
by (s) Angus M. MacNeil
Its President

A true copy
Attest.
[Seal]
April 4, 1957 *Clerk*

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

To the Sheriffs of our several Counties, or their Deputies, or any Constable of any City or Town within our said Commonwealth:

GREETING.

WE COMMAND you to attach the goods or estate of Handy Cafe, Inc., a corporation duly established by law and having a usual place of business at Boston in our County of Suffolk to the value of Three Thousand Dollars: and summon the said Defendant (if it may be found in your precinct), to appear safely keep so that he may be had before our Justices of the Municipal Court of the City of Boston, to be holden at Boston, within our County of Suffolk, for civil business, on Saturday, the 17th day of April, A.D., 1954, at nine of the clock in the forenoon; then and there to answer to Costello Distributing Company, Inc., a corporation duly established by law and having a usual place of business of South Boston in an action of Contract.

To the damage of the said Plaintiff, (as it say) the sum of Three Thousand Dollars, as shall then and there appear, with other due damages.

And have you there this Writ with your doings thereon.

Witness, ELIJAH ADLOW, Esquire, at Boston aforesaid, the 23rd day of March, in the year of our Lord one thousand nine hundred and fifty four.

(s) JOHN E. HURLEY, *Clerk.*

November 3, 1953

A true Copy Attest:

(s) GEORGE A. ROCHFORD

Asst. Clerk

OFFICER'S RETURN. SUFFOLK, ss. BOSTON, April 2, 1954

By virtue of this Writ, I this day attached a chip as the property of the within named defendant corporation Handy Cafe, Inc. and afterwards on the same day summoned it to appear and answer at Court as within directed by delivering to Susan Bailey its Clerk and the officer in charge of its business a summons together with an attested copy of the within writ. In the service hereof it was necessary and I actually used a motor vehicle 7 miles.

Fees: Service	$2.00
Copy	.50
Travel	.70
Motor Vehicle	1.05
	$4.25

WILLIAM J. McMORROW
Deputy Sheriff

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Supreme Judicial Court

HANDY CAFE INC.

v.

COSTELLO DISTRIBUTING COMPANY
JOSEPH L. HURLEY,
FELIX FORTE,
PAUL G. KIRK,
VINCENT BROGNA.

PETITION FOR DECLARATORY DECREE

Filed Dec. 15, 1955

Now comes the plaintiff in the above entitled action and states that:

1. It is a Massachusetts corporation having a place of business in Somerville, Mass.

2. The defendants are all judges of the Superior Court of the Commonwealth of Massachusetts and have their principal office in Boston Suffolk County.

3. That the defendants by their orders and actions taken in concert one with the other have seized and retained the property of the plaintiff.

4. That said actions were taken as follows:

a. The said defendant Hurley entered an order appointing a permanent receiver so called one Benjamin Gargill of Boston over the property of the plaintiff under the conditions as follows as of public and court records. The petition for the said appointment was not sufficient in allegations for any such appointment. The petitioner therein had no debt upon which it could petition legally for such an appointment. The service of process upon which the alleged judgment declared upon was false and in fact no service was made upon said writ. The declaration filed in the said action upon which the judgment so called was obtained was apparent on its face as illegal and void. That the said declaration was for two counts in a total amount of over four thousand dollars as appears of record. That no waiver court order verdict or other legal method of clearing said record was effected upon said docket. That no notice was sent under G.L.c. 231 sec. 58 was ever sent. That no order of court for judgment was ever made by the court. That no military affidavit was ever filed under the provisions of the soldiers and sailors act. That prior to the said appointment of a receiver the creditor so called admitted and delivered under seal an acknowledgement of satisfaction of all claims in full and released the plaintiff of all liability. That the execution issued shows no nulla bona return thereon. That the record shows that the execution so called was never returned into court as required by

law by the sheriff. That the so called return made by the sheriff thereon on July 2, 1954 was absolutely false on the date that said document was delivered to the clerk of court on March 9, 1955. That the so called claim of the alleged creditor as made by the so called judgment was on the date of the appointment false according to the records of the court. That no sufficient demand and return as required by statute was ever made upon the so called execution. That no proof of any of the necessary allegations as required by statute was ever made to the court on said appointment. Thereupon the Court appointed a permanent receiver for the property of Handy Cafe, Inc. on May 10, 1955, by Judge Hurley.

5. That thereafter in accordance with the provisions of the decree appointing the said receiver the plaintiff on many occasions applied to the Court as stated therein for directions upon compliance with the said property would be returned to the plaintiff. In violation of the provisions of said decree the court Forte J. and others refused to give any directions for said release of property.

6. That the plaintiff requested the court to release its property upon deposit with the court of assents of all claimants against the plaintiff or the furnishing of a surety company bond for their security but this was also refused by the court Hurley J. and Forte J.

7. That in accordance with its rights the plaintiff applied to the court to vacate the order appointing the receiver but that motion or rather motions have not been heard up to the time of filing of this petition although properly marked and assigned for hearing for months.

8. That without the slightest bit of evidence the court Judge Brogna heard a motion of the so called receiver for leave to sell the said assets of the plaintiff. It appeared that that evidence was taken but none upon any of the

necessary conditions for sale of property by one in possession of another's property. There appeared in evidence and in the records of the court the facts that the receiver had so conducted the business of the plaintiff as to nearly destroy it. He had the place of business run out of limits for service men in the armed forces of the United States. He was censured by the Licensing Board of the City of Boston for improper conduct of the place of business. The renewal of the license under which the business operates is threatened for the year 1956 by reason of the objections of the neighborhood and especially the clergy. Yet the receiver so called has in his possession over $5,000.00 of money of the plaintiff. There are about less that $3,000.00 in claims made by intervenors but none proved. No evidence was offered of any immediate urgency of sale of said assets. On this showing the Court Brogna J. ordered a sale of the plaintiff's assets.

9. On December 13, 1955 the so called receiver presented to the Court Kirk J. for allowance a petition for confirmation of sale of assets of the plaintiff. The court refused to conduct a legal hearing thereon. He refused to receive evidence upon the facts alleged and restricted counsel to arguments upon said petition. Over the objection as to this type of proceeding the court granted permission to the so called receiver to confirm the sale of the assets of the plaintiff.

10. Thereafter the plaintiff applied to the Supreme Judicial Court for some measure of the assistance it believes that it is entitled to under the law. But the said court also refused to make or hold any legal hearing for a determination of the facts as required so to do by law. He again refused to receive evidence or testimony.

11. There being a serious dispute between the parties hereto as to the right of possession by the defendants or their agent Gargill of the property of the plaintiff men-

tioned herein the plaintiff applies to this court for a declaratory decree determining the right of the defendants to retain possession of the plaintiff's property.

12. The plaintiff respectfully prays this court to declare officially the legal effect of the actions of the defendants mentioned herein in respect to their duty to the plaintiff under their oath of office in the premises herein.

13. That this court determine whether or not any of the acts, orders and decrees of the defendants contained herein by reference are of legal effect and if so which are legally effective.

14. That this court determine officially whether or not the plaintiff is entitled to possession of its property freed from the harassment of the defendants as suggested herein.

15. That pending hearing upon this matter this court issue temporary restraining orders preventing the defendants their agents servants from disposing of any of the property of the plaintiff in their custody.

16. For such other and further relief as to this court seems just.

Subscribed to under the penalties of perjury:

HANDY CAFE, INC.
by A. M. MACNEIL

A true copy
Attest:
April 1, 1957

Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Supreme Judicial Court

HANDY CAFE INC.

v.

REUBEN L. LURIE AND JUSTICES OF SUPERIOR COURT.

BILL OF COMPLAINT

Filed Feb. 10, 1956

Now comes the plaintiff in the above entitled action and states that:

1. It is a Massachusetts corporation having an usual place of business in Somerville, Mass.

2. Defendants are all members of the Superior Court of Massachusetts Judicial System.

3. That the named defendant is especially assigned to the pre-trial session of the Suffolk Superior Court at the present and in the scope of his duties is charged with the assignment of cases for jury trial.

4. That for many months the plaintiff has attempted to have heard and decided matters involving its very existence without any cooperation from said defendants as they are obligated so to do by the very laws of this Commonwealth. That a receiver was appointed for the property of the plaintiff without the slightest jurisdiction in the court therefor and without the very rudiments of fair administration of justice by the defendants.

5. That all attempts to have said appointments reviewed either by the defendants or by the Supreme Court have been illegally thwarted by the illegal and improper interference with orderly processes of justice and its administration by the defendants.

6. That regardless of the validity of the orders appointing the receiver nevertheless he is acting in accordance with the directions of the defendants and therefore

the plaintiff is obliged to seek redress only through normal processes of law. This the plaintiff is being deprived of by the arbitrary actions, orders and decrees of the defendants.

7. In the normal proceedings of our courts normal processes of review would ordinarily be available to the plaintiff from these arbitrary actions except that said defendants have by their interference with said processes and procedures completely interfered and prevented all action for said review and correction of said illegal orders and decrees.

8. That having deprived Handy Cafe Inc. illegally of its property and having prevented Handy Cafe Inc. from having said illegal interference and deprivation corrected by Higher courts the said defendants now are in the opinion of your plaintiff attempting to deliver the finishing blow to your plaintiff by specially assigning for trial a tort claim by one Bowen that has remained upon the docket from 1952 or prior thereto without freeing the resources of Handy Cafe Inc to prepare said case for proper and fair trial and from being fairly represented by attorneys of its own choice unhindered and unhampered by illegal intimidations of the defendants.

9. That the defendants have assigned for trial said case for February 10, 1956 without in any way granting to Handy Cafe Inc. any opportunity of preparation therefore.

10. That while the defendants find ample capacity in the courts for trial of the case aforesaid at this time they do not appear to be able to find capacity in the court to hear and dispose of the primary and fundamental determination of whether or not there is a receiver in existence as a matter of law who has any authority to act in any capacity in this case whatever. They apparently desire to presuppose his authority which as a matter of law does not exist.

11. On February 9, 1956 plaintiff's counsel attempted to present a motion pertaining to said case and request for vacation of orders for trial but was refused admission to

the presence of the court Lurie J. in violation of his rights. Plaintiff was advised that the assignment was to stand regardless of what plaintiff had to say.

12. Believing and therefore avering that under the circumstances there can be no fair trial of the rights of Handy Cafe Inc. in this action the plaintiff seeks the assistance of this court.

13. The plaintiff has no complete and adequate remedy at law and unless your defendants are restrained your plaintiff will be greatly and irreparably damaged.

Wherefore your plaintiff respectfully prays that:

1. Pending further order of this court your defendants be restrained and enjoined from causing the trial of the case of Bowen v. Handy Cafe to be held.

2. That a short order of notice issue for speedy completion of pleadings.

3. That the defendants be specifically instructed and directed and enjoined from knowingly violating the rights of the plaintiff and that they be ordered and directed to hear fairly and dispose of the motions filed in case 68595 eq. for months and that they do not further interfere with ordinary preparation of the record and transmission of said record to the Supreme Judicial Court on appeal.

4. For such other relief as to this court seems meet and just.

Subscribed to under the penalties of perjury.

HANDY CAFE INC.
By A. M. MACNEIL

A true copy
Attest:
April 1, 1957

Clerk

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Supreme Judicial Court

HANDY CAFE INC.

v.

COSTELLO DISTRIBUTING COMPANY

PETITION FOR WRIT OF ERROR

Filed March 12, 1956

Now comes the petitioner HANDY CAFE INC. and states that;

1. It is a Massachusetts Corporation having an usual place of business in Somerville, Middlesex County, Massachusetts.

2. The respondent is a Massachusetts Corporation having an usual place of business in Boston, Suffolk County, Massachusetts.

3. That by action commenced in March 1954 the respondent in error commenced an action of contract in the Municipal Court of the City of Boston said action being numbered 380861 in said court.

4. That the said respondent in error by the records of said court appears to have regovered judgment on said action, on April 30, 1954.

5. That the entry of judgment in said action was in error for the following reasons among others:

a. No service of process commencing said action was ever made upon the petitioner as required by law and said petitioner knew nothing of the existence of said action until after entry of alleged judgment;

b. That the Sheriff who purportedly made service such as was made on said writ if in fact any were ever made did not return said writ to court but delivered it to counsel for plaintiff, respondent in error; who in turn filed it in court although the sheriff did not author-

ize him to do anything with said writ and has stated under oath that the said counsel was not the agent or acting under authority of the sheriff in making said filing in court.

c. That the declaration filed in said action clearly indicated that claim was being made on a legally unenforceable claim. That the claim was of such nature that the court was obligated to refuse aid of the court in any enforcement of it.

d. That at the time of the said pendency of action the petitioner was under the protection of the United States Court and State Courts were without power to proceed against the petitioner on civil claims.

e. That the declaration showed that there were two counts in the claim, neither count waived, no allegation that both were for the same cause of action, no specific orders of court for entry of judgment.

f. That the writ showed an addamnum of three thousand dollars and each count in the declaration showed claim of in excess of two thousand two hundred dollars making a total of approximately four thousand five hundred dollars.

g. That judgment appears to have been entered in the amount of one count but which one cannot be determined from the declaration or any of the record.

h. That judgment was according to the docket entered by default.

i. That the notice required by G.L.c. 231 section 57 was not given by the clerk of court although it does not appear that any personal service had been made in the case.

j. That the person upon whom service was apparently made was a stranger to the petitioning corporation defendant in said action.

k. That no legal enforceable debt was due to the respondent from the petitioner at time of said action.

Wherefore your petitioner prays that a writ of error issue to correct the errors apparent in this action aforementioned at the Municipal Court of the City of Boston.

Subscribed to under the penalties of perjury.

By its attorney,

(s) A. M. MacNeil

A true copy.

Attest:

April 4, 1957.

Clerk

MOTION TO DISMISS

The defendant justices of the Supreme Judicial Court and Superior Court of the Commonwealth of Massachusetts now move that the Court dismiss the complaint in the above action, for the reason that it fails to state a claim upon which relief can be granted.

(signed)

MEMORANDUM

April 23, 1957

McCarthy, D. J.

This matter came on to be heard upon the defendant's motion to dismiss. The motion is allowed. See *MacNeil Bros. Company* v. *Justices of the Superior Court et al.* docket No. 5192, decided March 20, 1957, by the Court of Appeals for the First Circuit.

JUDGMENT

May 22, 1957

McCARTHY, J.

After hearing upon the defendant's motion to dismiss and in accordance with the Memorandum of the Court dated April 23, 1957, it is hereby ORDERED judgment for the defendant dismissing the complaint and for the defendant's costs taxed at $.

By the Court
JOHN B. MURRAY, JR.
Deputy Clerk

WILLIAM T. McCARTHY, *United States District Judge*

APPEAL

Notice of Appeal to the Court of Appeals under Rule (73b).

Notice is hereby given that the Handy Cafe Inc., plaintiff above named, hereby appeals to the United States Court of Appeals for the First Circuit from the judgment of dismissal entered in this action on May 22, 1957.

ANGUS M. MacNEIL *for the Appellant* HANDY CAFE INC.
547 Somerville Ave., Somerville, Mass.

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FILED
JAN 27 1958
JOHN T. FEY, Clerk

Supreme Court of the United States

No. 748

HANDY CAFE, INC.,

Petitioner,

—v.—

JUSTICES OF THE SUPERIOR COURT *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

ANGUS M. MACNEIL
547 Somerville Avenue
Somerville, Massachusetts
For the Petitioner

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AUTHORITIES CITED

Case:

J. J. Sullivan v. Canns Cabins, Inc., 309 Mass. 519 4

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Supreme Court of the United States

No. .....

HANDY CAFE, INC.,

Petitioner.

—v.—

JUSTICES OF THE SUPERIOR COURT *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Petitioner, Handy Cafe, Inc. prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the First Circuit entered in this case on October 25, 1957.

Citation to Opinion Below

The opinion of the Court of Appeals is reported in 248 F. 2nd 485, and is printed in the Appendix—hereto attached; *infra* pages 13-15.

Jurisdiction

The judgment of the Court of Appeals was entered on October 25, 1957. The memorandum of the District Court is found on p. 60 of the R. A. The judgment thereon on p. 61. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

Questions Presented

1) Whether or not the Federal Courts are bound to protect the judgments entered by them?

2) Whether or not the Courts of the Commonwealth of Massachusetts are in sufficient jurisdiction to enter in substance adjudications in bankruptcy?

3) Whether or not the defendants are completely immune from the operations of Title 42 U. S. C. sections 1983 *et seq.*?

Statement of Facts

This is an action brought by Handy Cafe, Inc., against the Justices of the Superior Court and Supreme Judicial Courts of Massachusetts for the claimed denial to the plaintiff of due process of law and equal protection under the laws required of the defendants by virtue of their offices as Justices of the Courts of the Commonwealth.

There is also the claim of abuse of jurisdiction by said defendants in assuming to themselves jurisdiction that has been reserved to the exclusive powers of the Federal Courts. Further claim is made for compliance with the law by the defendants for the reason that they have failed to give full faith and credit to the judicial determinations of the federal courts without right to deny said faith and credit.

The case background can be considered to have commenced in early 1954.

In March 1954, the plaintiff being completely solvent and doing a very good and profitable business for reasons not included in the record became subject to a petition in involuntary bankruptcy brought by several liquor wholesalers. Thereupon as part of the same general plan of destroying the plaintiff the Costello Distributing Company another liquor wholesaler, instituted an action in the Municipal Court of the City of Boston case numbered 380861. This case was commenced and prosecuted while the Petition in Bankruptcy in the Federal Court was pending (No. 264-54). The said petition was filed in the Federal Court in March 1954.

The sheriff was instructed to make service of the writ upon the wife of a former officer of the Handy Cafe, Inc. Said wife was not an officer or person in charge of its busi-

ness in March 1954 nor was her husband. The service was false and the return made into court was false. The said Costello was fully aware of the fact that Susan Bailey was no longer in any way connected with Handy Cafe, Inc. at the time of said service of process. Thereon, the declaration was filed on the return date. The said declaration was in two courts, both of which showed that no debt enforceable at law was made. Both counts were for claims illegal and void. See *J. J. Sullivan* v. *Canns Cabins, Inc.*, 309 Mass. 519. Thereafter, the case was defaulted in the absence of answer and appearance of the defendant. The defendant therein had no knowledge of the existence of the action. But the clerk failed to give the notice required by GLc. 231, section 58 of default to the Handy Cafe, Inc. Thereafter, without the knowledge of Handy the clerk of court without court order, entered a judgment without first bothering to get rid of either count in the declaration. Each was for in excess of two thousand dollars. The ad damnum was for three thousand dollars.

The clerk without leave of court entered judgment in the amount of in excess of two thousand dollars. This was entered in May about the twenty eighth, 1954. Execution was issued shortly thereafter. Demand was made for payment on June 2, 1954 but refused for the reason of the existence of the bankruptcy petition. Returnable June 10, 1954 the Court issued notice to all creditors and claimants of Handy to appear and show cause why the petition should not be dismissed. The Costello Distributing Company received its notice on May 28, 1954. It did not oppose on the date set or at any other time. Thereafter the Court dismissed the Petition in involuntary bankruptcy.

In July, 1954 the dismissal went to judgment. About the same time namely in the latter part of July Costello filed a suit seeking the same remedy as is reserved to the federal

courts in Bankruptcy, in the Superior Court for Suffolk County, case 68595 seeking a liquidating receiver.

Thereafter, for the expressed purpose of avoiding litigation and for the purpose of being left alone by Costello and others it paid to Costello about twelve hundred dollars. Thereafter said payment Costello caused the execution returned to court on March 9, 1955 with the endorsement thereon of no part satisfied. On March 9, 1955 or thereabouts the Superior Court on the strength of said execution and return and without hearing of the Handy Cafe, Inc. appointed a temporary receiver so called. Thereafter, Costello moved for an appointment of a permanent receiver. Thereupon in order to stop the situation then growing out of hand, Handy Cafe, Inc., caused the claim of Costello to be paid in full on April 18, 1955. On this date Costello delivered to Handy Cafe, Inc. President an acknowledgment of satisfaction of all claims to said date in full under seal. Thereafter on the petition still of Costello on April 25, 1955 the Court set a date for hearing a contempt petition and stated that he would hear evidence on the petition for appointment for a permanent receiver. None such was heard. Yet on May 10, 1955 in spite of the release under seal and the method used to obtain a void judgment and execution the Court appointed a permanent receiver of the assets of Handy. He attempted to liquidate them later. Other than the so-called hearing of April 25, 1955 the Court refused to hear the merits of the case whatever. It refused substitution of bond, cash securities of any kind for the property it was then destroying. It refused Handy all protection whatever. Petitions of all kinds were filed and without hearing denied in the Superior Court. Petitions of all possible kinds were filed in the Supreme Judicial Court and orders of notice thereon completely denied. One suit was heard on relief under chapter 214

of the GL sec. 22 and this was denied although no reason appeared therefor.

Stay orders were entered in case 68595 so that appeal could not be perfected. Stay orders were issued so that all proceedings in said case were stopped and prevented. Cross actions by Costello and the Sheriff were stayed by orders of the Court. A petition for writ of audita querela was sought and that proceedings were ordered stayed by the defendants. A petition to vacate the judgment was stayed until the present after the court found that he could not consider the lack of notice of the original process. The Supreme Judicial Court Spalding *J.* stated that he was in error and that upon a petition to vacate the judgment the Court could consider a lack of original service of process and that the parties were not bound by a false return of the sheriff. Thereafter for many many months no hearings have been had on the said petition and they are stayed. A petition for writ of error was filed in the Supreme Judicial Court. The Judge denied it for the reason of the pendency of the petition to vacate judgment. A bill of exceptions was held for over fourteen months without action thereon.

Application made to the full court resulted in the answer that the matter is interlocutory only and that relief cannot be given until the main case is presented. The main case is stayed in the Superior Court and therefore cannot be presented to the full court. Motions to dismiss for lack of jurisdiction in the Court because in conflict with the Bankruptcy Act has met the same fate of stay. The motion to dismiss for res adjudicata has likewise met the same fate. It is stayed. The business of Handy Cafe, Inc. has been destroyed. The losses are almost complete destruction.

All attempts to obtain hearings are stopped before they get anywhere.

Petitions for mandamus have been offered at least twenty times.

Not a single order of notice thereon has issued. Appeals have been prevented. Reviews rendered impossible. Therefore application is made to this Court. The defendants have admitted the factual situation by their motion to dismiss for failure to state a cause of action upon which relief can be given. Therefore, there is no issue of fact.

The record contains a few excerpts from the State Courts. The record could well contain the petitions in many applications for protection made by Handy and refused by the Courts. But the few samples will be sufficient to demonstrate the conditions prevailing throughout.

Reasons for Granting of the Writ

I

The plaintiff herein is the respondent in bankruptcy petition 264-54 at the District Court of the United States for the District of Massachusetts. The said Petition after hearing was dismissed. The dismissal became a judgment. But the State Courts refused to accord the dignity of res judicata to said judgment. The said Courts received what in substance was a petition in bankruptcy. See page 29 of the record appendix. The said State Courts upon the same claims as were made in the Federal Court upon which dismissal was ordered, entered decrees of appointment of receiver in substance, an adjudication in bankruptcy. It appears to the Petitioner that the Federal Courts are bound to protect their jurisdiction and their judgments.

If the State Courts can with impunity override the judgment of the Federal Court, where is the protection of the people gone? Here the State Courts after judgment of the Federal Courts entertained what in substance was a petition in bankruptcy and in effect adjudicated the petitioner herein a bankrupt. The Petitioner asks the protection of the Federal Courts to the judgment of dismissal entered in its favor in the District Court of the United States for the District of Massachusetts in case 264-54. See R. A. 19.

II

It is accepted law that the Courts of the United States have exclusive jurisdiction in bankruptcy matters. The action of the State Courts in entertaining the bill of complaint R. A. 55 and appointing a receiver thereon is the equivalent of adjudicating the Petitioner herein into bankruptcy. This appears contrary to all laws.

III

The civil rights provisions of the U. S. C. seem to be binding upon the officers of any state, who deny to the subjects thereof their inalienable civil rights. There are decisions on both sides of the issue. However, it appears that there must be some limit beyond which the judges of the State Court cannot go in the exercise of their powers of office.

Here the said State Court entered judgment without notice and opportunity to be heard. These are fundamentals to their exercise of any jurisdiction to adjudicate. See complaint filed, R. A. p. 2. The facts stated are completely admitted by the filing and hearing of the motion to dismiss for failure to state a claim, upon which relief could be granted. See R. A. 60.

The Court of Appeals very summarily sustained the District Court.

If the people of Massachusetts have no right to seek the protection of the Courts of the United States, when their own Justices refuse them the very essentials of due process of law, where are they to turn for protection. It may be argued that they may proceed through the State Courts and have the ultimate decision of the State Courts reviewed by the Supreme Court of the United States. But this would be impossible when as here appears three years have gone by and the State Courts still refuse to hold hearings upon the claims of the Petitioner and refuse all applications for protection by the simple means of refusing to hear any application from it for any purpose. See R. A. 8. 55, 50, 45, 39.36. In not a single instance was the petitioner able to obtain any hearing upon merits whatever.

Certainly, there is no possible method of obtaining justice when hearings are denied on merits as constantly and completely as here appears. From the start to the finish Handy Cafe, Inc. has never had an opportunity to be heard upon its rights and has been stripped of its complete assets. If there ever was need for federal protection the Petitioner is surely deserving of it.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

ANGUS M. MACNEIL
547 Somerville Avenue
Somerville, Massachusetts
For the Petitioner

January 18, 1958

APPENDIX A

§2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

§1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction. As amended May 24, 1949, c. 139, §90, 63 Stat. 102.

§1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or

usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. As amended Sept. 3, 1954, c. 1263, §42, 68 Stat. 1241; Sept. 9, 1957, Pub. L. 85-315, Part III, §121, 71 Stat. 637.

APPENDIX B

Angus M. MacNeil, Somerville, Mass., for appellant.

Edward F. Mahony, Asst. Atty. Gen., with whom George Fingold, Atty. Gen., was on brief, for appellees.

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

PER CURIAM:

This is an appeal from a judgment dismissing a complaint, as amended, for failure to state a claim upon which relief could be granted.

On March 21, 1957, Handy Cafe, Inc., a Massachusetts corporation, filed its complaint under the Civil Rights Act (42 U. S. C. A. §1983) and under the jurisdictional Act pursuant thereto (28 U. S. C. §1343). The defendants, not named, were described in the complaint as "the members of the Superior Court and Supreme Judicial Court of the Commonwealth of Massachusetts." It was alleged that by various acts and omissions of the defendants, under color of their respective offices, the plaintiff had been deprived of its property without due process of law and had been denied the equal protection of the laws, contrary to the Fourteenth Amendment. The prayer of the complaint was that the federal court issue the required orders and directions to the defendants requiring that they comply with the provisions of the laws and Constitution of the United States by supplying to the plaintiff that measure of due process of law required; that the defendants be directed to supply to the plaintiff herein equal protection under the laws with that supplied to other litigants in the courts of Massachusetts; that the losses caused the plaintiff by the wrongful actions of the defendants be ascertained and

adjudicated and that judgment be entered therefor; that the federal court enjoin the defendants from further depriving the plaintiff of its constitutional rights; and for other appropriate relief.

[1] This case is really ruled by our decision in MacNeil Bros. Co. v. Justices of the Superior Court, 1 Cir., 1957, 242 F. 2d 273, certiorari denied 78 S. Ct. 48.

[2] There is the added circumstance that certain proceedings were had in the Municipal Court of the City of Boston while a bankruptcy proceeding was pending in the United States District Court. It is asserted that the state court proceeding was in derogation of the exclusive jurisdiction of the federal court in matters of bankruptcy and that such court of bankruptcy should enter the necessary orders to maintain its jurisdiction. Granting that the federal district court, as a court of bankruptcy, had power to issue appropriate orders to the state courts to preserve its exclusive jurisdiction in the bankruptcy proceeding, the exercise of this power was never applied for, so far as appears, in such bankruptcy proceeding. It does appear that the federal district court dismissed the bankruptcy proceeding on June 11, 1954. This proceeding is an independent suit against individual officials of the State under the Civil Rights Act.

[3] In so far as it may be contended that the judgment of dismissal of June 11, 1954, of such bankruptcy proceeding operated as res judicata of various issues raised in subsequent proceedings filed in the Superior Court of Massachusetts, this, of course, is a matter of affirmative plea by way of defense in the state court.

[4] In addition to the foregoing, we are bound to observe that we know of no authority to the effect that "the members of the Superior Court and Supreme Judicial Court of the Commonwealth of Massachusetts" constitute

suable legal entities. Action under the Civil Rights Act must be against the individual persons or officials who, under color of their respective state offices, subject a person to denial of federal constitutional rights. There are over thirty judges of the Massachusetts Superior Court throughout the Commonwealth and seven justices of the Supreme Judicial Court. Obviously not all of these persons could have been concerned with the various state court proceedings herein complained of. It does not appear against which individuals judgments for damages and enforcement orders are sought to be issued.

All in all, we regard this as a completely preposterous case.

A judgment will be entered affirming the judgment of the District Court.